

Letter of Findings: 04-20130355
Sales Tax
For the Years 2010, 2011, and 2012

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

ISSUE

I. Sales Tax – Imposition.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-4-1; IC § 6-8.1-5-1; IC § 6-8.1-5-4; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012).

Taxpayer protests the Department's assessments on additional taxable sales inside its convenient store.

STATEMENT OF FACTS

Taxpayer, an Indiana S corporation, operates a convenience store/gas station in Indiana, which also sells hot and cold food (meals) prepared in its on-site kitchen. Taxpayer has one shareholder ("Shareholder"), who resides in Indiana.

In late 2012, the Indiana Department of Revenue ("Department") audited Taxpayer's business records. Pursuant to the audit, the Department found that Taxpayer failed to maintain adequate records as statutorily required. Based on the best information available at the time of the audit, the Department thus determined that Taxpayer had additional taxable sales inside its store, which resulted in additional income of Taxpayer. Since Taxpayer is an S corporation, its income subsequently flowed through to Shareholder as a result. The Department's audit assessed Taxpayer additional sales tax. The Department's audit also imposed additional income tax on Shareholder.

Taxpayer protested the assessment of sales tax. A phone hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest of sales tax assessment. Please refer to Letter of Findings 01-20130366 (March 2014), which addresses Shareholder's protest of additional individual income tax assessment. Additional facts will be provided as necessary.

I. Sales Tax – Imposition.

DISCUSSION

The Department's audit imposed additional sales tax on the ground that Taxpayer failed to maintain its source documents, including cash register tapes (also known as z tapes), in determining the proper amount of sales tax. Taxpayer, to the contrary, claimed that the Department's audit assessment is incorrect. Specifically, Taxpayer disagreed with the Department's audit methodology, claiming that the Department's audit did not consider some of Taxpayer's purchases were exempt, which would have reduced its tax liability.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012).

Indiana imposes a sales tax on retail transactions. IC § 6-2.5-2-1 states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

IC § 6-2.5-4-1, in pertinent part, states:

- (a) A person is a retail merchant making a retail transaction when he engages in selling at retail.
- (b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:
 - (1) acquires tangible personal property for the purpose of resale; and
 - (2) transfers that property to another person for consideration.
- (c) For purposes of determining what constitutes selling at retail, it does not matter whether:
 - (1) the property is transferred in the same form as when it was acquired;
 - (2) the property is transferred alone or in conjunction with other property or services; or
 - (3) the property is transferred conditionally or otherwise.

Accordingly, Taxpayer, as a retail merchant selling tangible personal property and also as an agent for the State, is responsible for collecting and remitting the sales tax. The sales tax is seven percent of the gross retail income received by Taxpayer in a retail unitary transaction—a separate added amount to the consideration in the transaction.

IC § 6-8.1-5-1(b), in relevant part, states "[i]f the department reasonably believes that a person has not reported the proper amount of tax due, **the department shall** make a proposed assessment of the amount of the unpaid tax **on the basis of the best information available to the department**. The amount of the assessment is considered a tax payment not made by the due date and is subject to [IC 6-8.1-10](#) concerning the imposition of penalties and interest." (**Emphasis added**).

IC § 6-8.1-5-4(a) further provides:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. **The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.** (**Emphasis added**).

During the audit period, Taxpayer did not maintain and produce adequate records despite the Department's field auditor's repeated requests. The Department's audit noted that, in relevant part, that:

Taxpayer did not present for audit source sales documents (cash register tapes /z-tapes). From the early stages of the audit, the auditor instructed POA to advise Taxpayer to retain all z-tapes so Taxpayer could provide source documents for audit. Because notification of the audit was in late 2012, the reporting year 2012 was included in the audit period and as such Taxpayer had sufficient notification to retain source documents for October through December 2012. Additionally, POA was also advised to instruct Taxpayer to retain all future z-tapes as some early month 2013 z-tapes may be . . . relied upon to lend support to reported or audited sales.

Ultimately, Taxpayer did not retain or provide any z-tapes during the audit even when the auditor on March 1, 2013, requested the February 2013 Close Report (z-tape). Taxpayer stated [that] it was not available.

As an alternative, the Department eventually reviewed records of Taxpayer's purchases and bank accounts although all records were incomplete. Based on the best information available, the Department proceeded to conclude the audit, imposing additional sales tax on the additional taxable sales.

Taxpayer asserted that the audit's "methodology is incorrect because it does not match the verifiable bank records, because it does not match the original spreadsheet records of [Taxpayer], and because it does not match the actual purchase invoices of [Taxpayer]." Taxpayer also asserted that the audit did not "include Stanz Cheese and Gordon's Food Services in its exemption percentage calculation," which could have reduced Taxpayer's tax liability. To support its protest, Taxpayer's representative compiled several Excel Spreadsheets, which contained Taxpayer's calculations as compared to the Department's audit workpapers. However, without the required source documentation to support Taxpayer's numbers, the representative's Excel Spreadsheets could not be verified. In addition to copies of its 2009, 2010, 2011, and 2012 monthly bank statements, Taxpayer submitted copies of "Sales Report[s]," which was information compiled by Taxpayer and manually recorded in an Excel worksheet created by Taxpayer. Relying on its "Sales Reports" as its source documents, Taxpayer claimed the Department's audit assessments were incorrect.

Taxpayer is mistaken. First, pursuant to IC § 6-8.1-5-4(a), Taxpayer is required to keep books and records, which are "all source documents . . . including invoices, register tapes, receipts, and canceled checks" so the Department can determine Taxpayer's liability. Taxpayer did not do so. Rather, Taxpayer claimed that its bank statements and "Sales Reports" are its source documents. Upon review, however, the Department is not able to agree. Taxpayer's bank statements simply summarized its monthly financial transactions, such as deposits, transfers, or withdrawals for the years at issue, concerning its two bank accounts; its bank statements failed to show any sales transactions occurred inside its convenience store during the tax years at issue and the amount of the sales tax that should have been collected. Thus, the Department is not able to agree with Taxpayer that its bank statements are the source documentation under IC § 6-8.1-5-4(a).

Additionally, Taxpayer's "Sales Reports" were prepared and compiled by Taxpayer on a daily and/or monthly basis. Taxpayer's "Sales Reports" first contained the total daily sales tax amount in each of eight categories: "FOUNTAIN," "DELI TAX," "POP," "CANDY," "GROTAX," "CAT15," "CIGARETTE," and "MERCHANDISE." Taxpayer then totaled the sales tax for that month for each of those categories. Taxpayer's "Sales Reports" did not contain any records of each retail transaction (i.e., what items were sold on each transaction) that occurred inside its store; rather, the "Sales Reports" simply attempt to summarize Taxpayer's total sales of each category for specific day or month. Thus, in the absence of the z-tape, the Department also is not able to agree with Taxpayer that its "Sales Reports" are the source documentation under IC § 6-8.1-5-4(a).

In short, Taxpayer not only failed to adequately maintain its books and records, but also failed to provide documentation to substantiate its above assertion. Thus, given the totality of the circumstances, in the absence of other supporting documentation, the Department is not able to agree that Taxpayer met its burden of proof to demonstrate that the proposed assessment is wrong.

FINDING

Taxpayer's protest is respectfully denied.

